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CHARLES ELMORE CROPL
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 245

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION, ET AL.

Appellant,

vs.

CITY OF PORTERVILLE, A MUNICIPAL CORPORATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

ANSWER TO APPELLEES' STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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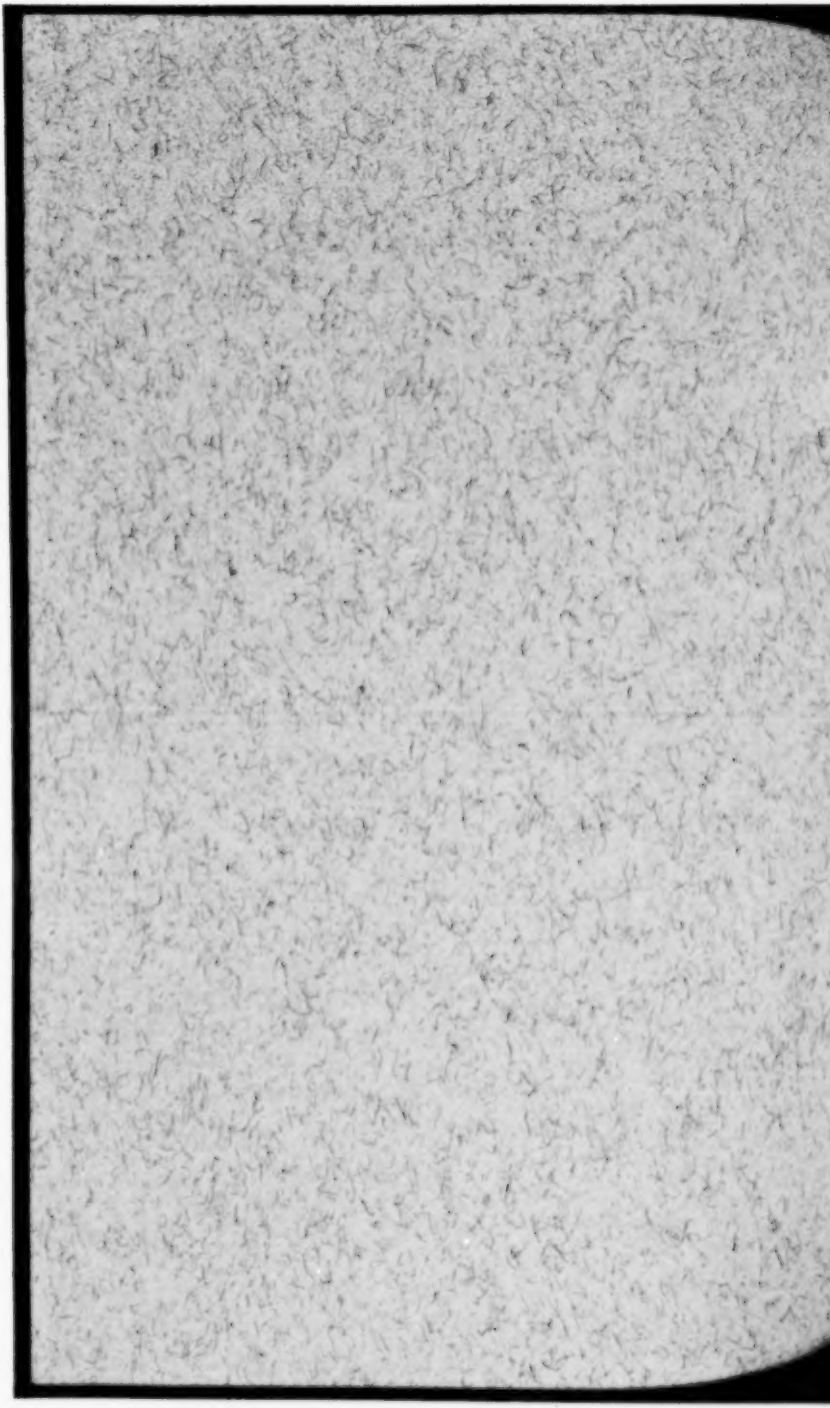

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IN THE DISTRICT COURT OF APPEAL,
FOURTH APPELLATE DISTRICT,
STATE OF CALIFORNIA

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4 Civ. 3734

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION, ET AL.

Plaintiff and Appellant,

vs.

CITY OF PORTERVILLE, A MUNICIPAL CORPORATION, AND ROSS GARDNER, AS BUILDING INSPECTOR, AND HAROLD COULTHURST, AS CITY MANAGER OF THE CITY OF PORTERVILLE, A MUNICIPAL CORPORATION,

Defendants and Respondents.

ANSWER TO APPELLEES' STATEMENT OF MATTERS AND GROUNDS MAKING AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES; AND MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT HEREIN

The argument in Appellees' Statement of Matters and Grounds Making Against Jurisdiction of the Supreme Court of the United States; and Motion to Dismiss Appeal, or in the Alternative, to Affirm the Judgment Herein, is

all directed to the merits, which we believe should be more fully and appropriately answered in the briefs. The arguments only serve to show the existence and great importance of the question involved and to demonstrate the necessity of obtaining the decision of the Supreme Court of the United States on the question. We respectfully refer to Appellant's *"Statement of Basis Upon Which It Is Contended That the Supreme Court of the United States Has Jurisdiction on Appeal"*, and particularly Subdivision IV, *"The Nature of the Case"* and Subdivision VI, *"Grounds Upon Which It Is Contended the Questions Involved Are Substantial"*.

Briefly, however, we may point out that the petitioner applied to the City of Porterville for permission to erect a church for religious worship on property owned by it and located in the City of Porterville. The defendants refused to issue the building permit, on the ground that its ordinance forbade it. Petitioner applied for a writ of mandate, attacking the ordinance, pleaded in full, and calling the court's attention specifically to the constitutional challenge of due process and invasion of the freedom of religious worship. The decision of the Superior Court specifically upheld the validity of the ordinance over the constitutional objection. The decision of the District Court of Appeal affirmed the trial court, specifically ruling on the constitutional question.

The appellate courts of other states in all cases where they have dealt with similar ordinances have held such ordinances unconstitutional as violative of due process.

City of Sherman v. *Sims* (Texas, 183 S.W. (2d) 415, aff'g 181 S.W. (2d) 100;

Ellsworth v. *Gercke* (Ariz.), 156 Pac. (2d) 242;

Roman Catholic Archbishop v. *Baker* (Ore.), 15 P. (2d) 391;

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State ex rel. Roman Catholic Bishop v. *Hill* (Nev.), 90 Pac. (2d) 217;

State ex rel. Synod of Ohio v. *Joseph* (Ohio), 39 N.E. (2d) 515, 138 A.L.R. 1274.

The challenge is to the validity of the ordinance of the City of Porterville in its sweeping prohibition of any and all churches from preferred residential districts of the city as being an improper exercise of the police power and also as an invasion of religious freedom. We note appellees' use the timeworn argument that since the police power of the state might in some instances regulate church structures, power to regulate exists in all cases. Under such argument, appellees would entirely disarm the constitutional guarantees. Appellees argue that the courts "should render unto Caesar that which is Caesar's and unto God which is God's" and thus grant the state the unlimited power of regulation which of course would include the power to destroy.

We note also that appellees argue that religion is no more necessary to life than water, and that that does not give water production a preferred place in a residential section of the city. We question this analogy. The segregation of water production to remote districts does not appear analogous to the like segregation of churches which are intimately connected with home and family life.

The case of *Euclid* v. *Ambler Realty Company*, 272 U. S. 365, relied upon by appellees, is decisive of the point against them that there is a substantial federal question here involved. It also shows that the question was not passed on in that case, the court deliberately avoiding passing on it because it was not therein raised. The court had under consideration a zoning ordinance of the general nature here involved. In holding that ordinance to be generally valid, it expressly made note that no issue was raised as to the

proviso in the ordinance restricting churches, schools, libraries and other public and semi-public buildings; for that reason it refused to consider the question which is here now squarely presented to this court for the first time, namely, may the police power to protect the public health, safety and morals, or the general welfare clause, be invoked to prohibit the erection of churches in residential zones? Since the *Euclid* case, this question has come up in various aspects in several states, but never until now has it reached this court. In each of the state court decisions until the present case, as noted supra, the result has been to deny the extension of the police power to thus dictate where churches might be erected.

Respectfully submitted this 26th day of July, 1949,

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,

By JOHNSON, HARMON, STIRRAT & HENDERSON,

Its Attorneys.

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